

§ 105-164.4I. Service contracts.

(a) Tax. – The sales price of or the gross receipts derived from a service contract or the renewal of a service contract sold at retail is subject to the general rate of tax set in G.S. 105-164.4 and is sourced in accordance with the sourcing principles in G.S. 105-164.4B. The retailer of a service contract is required to collect the tax due at the time of the retail sale of the contract and is liable for payment of the tax. The tax is due and payable in accordance with G.S. 105-164.16.

The retailer of a service contract is the applicable person listed below:

- (1) When a service contract is sold at retail to a purchaser by the obligor under the contract, the obligor is the retailer.
- (2) When a service contract is sold at retail to a purchaser by a facilitator on behalf of the obligor under the contract, the facilitator is the retailer unless the provisions of subdivision (3) of this subsection apply.
- (3) When a service contract is sold at retail to a purchaser by a facilitator on behalf of the obligor under the contract and there is an agreement between the facilitator and the obligor that states the obligor will be liable for the payment of the tax, the obligor is the retailer. The facilitator must send the retailer the tax due on the sales price of or gross receipts derived from the service contract no later than 10 days after the end of each calendar month. A facilitator that does not send the retailer the tax due on the sales price or gross receipts is liable for the amount of tax the facilitator fails to send. A facilitator is not liable for tax sent to a retailer but not remitted by the retailer to the Secretary. Tax payments received by a retailer from a facilitator are held in trust by the retailer for remittance to the Secretary. A retailer that receives a tax payment from a facilitator must remit the amount received to the Secretary. A retailer is not liable for tax due but not received from a facilitator. The requirements imposed by this subdivision on a retailer and a facilitator are considered terms of the agreement between the retailer and the facilitator.

(a1) Mixed Service Contract. – A service contract for real property that includes two or more services, one of which is subject to tax under this Article and one of which is not subject to tax under this Article, is taxable in accordance with this subsection. Tax applies to the sales price of or gross receipts derived from a mixed service contract unless one of the following applies:

- (1) Allocation. – The person determines an allocated price for the taxable portion of the service contract based on a reasonable allocation of revenue that is supported by the person's business records kept in the ordinary course of business. In this circumstance, tax applies to the allocated price of the taxable portion of the service contract.
- (2) Ten percent (10%) test. – The allocated price of the taxable portion of the service contract does not exceed ten percent (10%) of the price of the contract.

(b) Repealed by Session Laws 2017-204, s. 2.5(a). For effective date and applicability, see editor's note.

(c) Repealed by Session Laws 2018-5, s. 38.5(f), effective June 12, 2018.

(d) Basis of Reporting. – A retailer who sells or derives gross receipts from a service contract must report those sales on an accrual basis of accounting, notwithstanding that the retailer reports tax on the cash basis for other sales at retail. The tax on the sales price of or the gross receipts derived from a service contract is due at the time of the retail sale, notwithstanding any portion that may be financed. If the sales price of or the gross receipts derived from the service contract is financed in whole or in part, the financed amount of the sales price of or the gross receipts derived from the service contract included in each payment is exempt from sales tax if the amount is separately stated in the contract and on the billing statement or other documentation provided to the purchaser at the time of the sale.

(e) Definition. – For purposes of this section, the term "facilitator" means a person who contracts with the obligor of the service contract to market the service contract and accepts payment from the purchaser for the service contract. (2014-3, s. 6.1(c); 2015-241, s. 32.18(c); 2015-259, ss. 4.2(c), 5(a), 6(c); 2016-5, s. 3.24(a); 2016-94, s. 38.5(h); 2017-57, s. 38.8(b); 2017-204, s. 2.5(a), (b); 2018-5, s. 38.5(f).)